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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of April 1, 1971

Between

**GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)**

And

NORFOLK AND WESTERN RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of April 1, 1971

Between

**GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)**

And

**THE FIRST PENNSYLVANIA BANKING AND
TRUST COMPANY, AS AGENT**

CONDITIONAL SALE AGREEMENT dated as of April 1, 1971, between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof), and NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation (hereinafter called the Railroad).

The Manufacturer has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B hereto (hereinafter, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 hereof, respectively, called the Equipment).

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Schedule B hereto and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing by the Manufacturer and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Commission and Department of Transportation requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted by the Manufacturer as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the Equipment to the Railroad, f.o.b. the Railroad's tracks at the

place or places and in accordance with the delivery schedule set forth in Schedule B hereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, accidents due to natural causes, acts of the Railroad, acts of government (such as embargoes, priorities and allocations, war or war conditions), riot or civil commotion, sabotage, strikes, differences with workmen, fire, flood, explosion, accidents or other events resulting in damage to plant, equipment or facilities and delays in receiving necessary materials. The Manufacturer shall have no obligation to deliver any unit of the Equipment hereunder subsequent to the filing by or against the Railroad of a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, and prior to the assumption in writing of all of the obligations of the Railroad under this Agreement by a trustee or trustees appointed for the Railroad acting pursuant to a court order or decree in any proceedings under said Section 77.

The Railroad may (a) purchase hereunder from the Manufacturer, or arrange for the acquisition by the Vendor from a person or persons other than the Railroad of, other units of standard-gauge railroad equipment (other than passenger or work equipment), first put into service no earlier than April 1, 1971 (hereinafter called Additional Equipment), which Additional Equipment may be acquired in lieu of or in addition to units of the Equipment, and (b) elect to exclude from this Agreement any unit or units of the Equipment described in Schedule B hereto. In the case of either of (a) or (b) above, the Vendor and the Railroad shall execute an agreement amendatory hereof or supplemental hereto providing for the inclusion hereunder of Additional Equipment or for the exclusion of any unit or units of the Equipment from this Agreement. If the Railroad should so elect to exclude any units of the Equipment for any reason other than the Manufacturer's failure to con-

struct, sell and deliver the same in accordance with its obligations hereunder, the Railroad shall nevertheless be obligated to accept those units and pay the full Purchase Price (as hereinafter defined) therefore if and when those units shall be completed and delivered to it by the Manufacturer, which payment shall be made in cash by the Railroad or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine which will assure the Manufacturer of prompt payment in full for those units of the Equipment.

The Equipment shall be subject to inspection and approval prior to delivery by an inspector or other authorized representative of the Railroad, and the Manufacturer shall grant to said inspector or authorized representative reasonable access to its plant. The Manufacturer agrees to inspect materials entering into the construction of the Equipment in accordance with the standard quality control practices of the Manufacturer.

Upon the completion of construction of one or more units of the Equipment, that unit or those units shall be presented to an authorized representative of the Railroad for inspection at the place designated in Schedule B hereto for delivery. If each unit conforms to the Specifications, the authorized representative shall execute and deliver to the Manufacturer, in duplicate, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that the unit or units of the Equipment covered thereby have been inspected, have been found to conform to the Specifications, are marked in accordance with Article 6 hereof and are accepted on behalf of the Railroad.

Upon delivery by the Manufacturer to the Railroad and acceptance by the Railroad of a unit of the Equipment hereunder, the Railroad shall assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The estimated unit price and the estimated total price of the Equipment are set forth in Schedule B hereto. Such estimated prices, which include off-line freight charges, if any, from the Manufacturer's plant to the point of delivery, are subject to such increase or decrease as may be agreed to by the Manufacturer and the Railroad. The term "Purchase Price" as used herein shall mean the estimated prices as so increased or decreased.

Units of the Equipment shall be settled for in such number of groups of such units delivered to and accepted by the Railroad as shall be determined by mutual agreement of the Railroad and Manufacturer (each such group being hereinafter called a Group).

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor, at such place as the Vendor may designate, the Purchase Price of the Equipment as stated in the invoice or invoices therefor (hereinafter called the Invoiced Price), as follows:

(a) on any Closing Date (as hereinafter defined) with respect to a Group, the amount, if any (hereinafter called the Adjustment Payment), by which the Invoiced Price of all the units of the Equipment for which settlement has theretofore been and is then being made (hereinafter called the Aggregate Invoiced Price), exceeds the sum of the Deferred Purchase Price set forth in Item 2 of Schedule A hereto and any amount previously paid or payable with respect to the Aggregate Invoiced Price pursuant to this subparagraph (a);

(b) if applicable, upon receipt of a final statement of the aggregate Purchase Price (hereinafter called the Final Statement) setting forth any revision of the Purchase Price of the Equipment (the Purchase Price as so revised being hereinafter called the Final Purchase Price), the amount, if any, by which the Final Purchase Price of all units of the Equipment, as stated in the Final Statement therefor, shall exceed the sum of the Deferred Purchase Price and the Adjustment Payment, if any; and

(c) in 15 consecutive annual instalments (as nearly equal as practicable) payable on April 1, 1972, and on each April 1 thereafter to and including April 1, 1986, an amount equal to the Aggregate Invoiced Price (or Final Purchase Price if an amount greater than the Aggregate Invoiced Price) of the Equipment less the amounts paid or payable with respect thereto pursuant to subparagraphs (a) and (b) of this paragraph.

If this Agreement is assigned by the Manufacturer, the obligations of the Railroad under subparagraphs (a) and (b) of this paragraph shall be unsecured obligations and the Manufacturer shall not have any lien on, or claim against, the Equipment or any part thereof with respect to said obligations.

The portion of the Purchase Price of the Equipment payable under subparagraph (c) of the preceding paragraph of this Article 3 shall bear interest from the respective Closing Dates at the Rate of $7\frac{3}{4}\%$ per annum on the portion thereof payable on or prior to April 1, 1976, and at the rate of $8\frac{1}{4}\%$ on the portion thereof payable after April 1, 1976. This interest will be paid by the Railroad to the Vendor, at such place as the Vendor may designate, to the extent accrued, on October 1 and April 1 in each year, commencing October 1, 1971 (hereinafter called the interest payment dates).

The Final Statement, if any, shall be delivered by the Manufacturer to the Railroad as soon as practicable after the last Closing Date.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, not more than 10 business days following receipt by the Railroad from the Manufacturer of a bill of sale, invoice, Certificate or Certificates of Acceptance and opinion of counsel for the Manufacturer with respect to that Group, as shall be fixed by the Railroad by notice telephoned, telegraphed or mailed to the Vendor at least five business days prior to the Closing Date designated therein. The term

“business days” as used herein means calendar days, excluding Saturdays, Sundays and bank holidays in the Commonwealth of Virginia or the Commonwealth of Pennsylvania.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of $9\frac{1}{4}\%$ per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

All payments provided for in this Article 3 shall be made in Federal funds. The Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

ARTICLE 4. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes—other than income, gross receipts (except gross receipts taxes in the nature of sales taxes), excess profits and similar taxes—or licenses hereafter levied or imposed upon or measured by this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment, upon the use or operation thereof, upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments,

licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings said taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto or the Railroad shall have approved the payment thereof.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements contained herein, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, and all of the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad, will execute a bill or bills of sale of

the Equipment transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 22 hereof. The Vendor will thereupon execute in the same manner and deliver at the same place, for filing, recording or deposit in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and will pay to the Railroad any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand of the Railroad.

ARTICLE 6. *Marking of Equipment.* The Manufacturer will mark plainly, distinctly, permanently and conspicuously, in stencil or otherwise, on each side of each unit of the Equipment before delivery thereof to the Railroad, (i) the following legend in letters not less than one inch in height:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c

(ii) the identifying number of each unit of the Equipment as set forth in Schedule B hereto, and (iii) such name, initials or insignia as shall be designated by the Railroad, subject to the limitation set forth below in the second paragraph of this Article 6. If any of these markings shall at any time be removed, defaced or destroyed, the Railroad shall promptly cause them to be restored or replaced. The Railroad shall not change or permit to

be changed the numbers of any unit of the Equipment (or any numbers which may have been substituted as herein provided) at any time except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Vendor by the Railroad and which shall be filed, recorded and deposited in the same manner as this Agreement.

The Equipment may be lettered with the name, initials or insignia of the Railroad, or any Affiliate, sublessee or transferee of the Railroad which is permitted to use the Equipment as provided herein, or in any other appropriate manner, for convenience of identification of the interest therein of the Railroad or any Affiliate, sublessee or transferee. Except as provided for herein, the Railroad will not permit the name of any person, association or corporation to be placed on any unit of the Equipment as a designation which might be interpreted as a claim of ownership thereof by the Railroad or by any person, association or corporation other than the Vendor. The Vendor shall, however, upon the written request of the Railroad, consent to the placing of the name of any person, association or corporation specified in that request upon any unit of the Equipment if the Railroad shall deliver to the Vendor at the time of the request an opinion of counsel satisfactory to Special Counsel stating that the right, title and interest of the Vendor in and to said unit will not be impaired or invalidated by the placing of the specified name thereon.

ARTICLE 7. *Replacement of Equipment.* In the event that any unit of the Equipment shall be or become worn out, lost, destroyed, irreparably damaged, condemned, seized by a government or otherwise rendered permanently unfit or unavailable for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall promptly and fully inform the

Vendor in regard thereto. When the aggregate Casualty Value (as hereinafter defined) of units having suffered a Casualty Occurrence under this Agreement (exclusive of units having suffered a Casualty Occurrence with respect to which payment shall have been made to the Vendor pursuant to this Article 7) shall exceed \$100,000, the Railroad, within 30 days of such event, shall promptly pay to the Vendor an amount equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Vendor a certificate of any Vice President, the Assistant Vice President—Finance or the Treasurer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence.

In the event that, in the judgment of the Railroad, any unit or units of the Equipment shall become obsolete or shall require substantial additions or improvements thereto or the rebuilding thereof in order to be operated efficiently and economically, the Railroad shall so certify to the Vendor in a certificate of any Vice President, the Assistant Vice President—Finance or the Treasurer of the Railroad and shall pay to the Vendor an amount equal to the Casualty Value of the unit or units as set forth in such certificate. The unit or units shall be deemed to have suffered a Casualty Occurrence on the date of such payment.

Upon the written request of the Railroad, following payment to the Vendor of a sum equal to the Casualty Value of a unit or units of the Equipment having suffered or having been deemed to have suffered a Casualty Occurrence, the Vendor shall deliver a bill or bills of sale of the unit or units transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby.

Any money paid to the Vendor pursuant to the first or

second paragraph of this Article 7 shall, as the Railroad may direct in a written statement filed with the Vendor, be applied (so long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing), in whole or in part, toward the cost of acquisition by the Vendor from a person or persons other than the Railroad of a unit or units of standard-gauge railroad equipment (other than passenger or work equipment), first put into service no earlier than April 1, 1971, to replace the unit which suffered a Casualty Occurrence. The Railroad shall deliver to the Vendor a certificate of any Vice President, the Assistant Vice President—Finance or the Treasurer of the Railroad that the cost of the replacement equipment does not exceed the fair value thereof.

If the cost of any replacement equipment shall exceed the amount to be paid therefor by the Vendor from money paid to it pursuant to the first or second paragraph of this Article 7, the Railroad shall provide the funds for the remainder of said cost and shall be entitled to a credit against any sum or sums thereafter payable to the Vendor pursuant to the first or second paragraph of this Article 7 to the extent that the Casualty Value which such replacement equipment would have if it suffered a Casualty Occurrence on the date said sum or sums are payable exceeds the amount so paid therefor by the Vendor.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence (other than a replacement unit) shall be deemed to be the product of that portion of the Purchase Price thereof payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof multiplied by a fraction, the numerator of which shall be the number of instalment payment dates remaining as of the date payment is made with respect to that Casualty Occurrence to and including April 1, 1986, and the denominator of which shall be 15. The Casualty Value of

each replacement unit having suffered a Casualty Occurrence shall be the product of the cost thereof (provided for by the application of money paid to the Vendor pursuant to the first or second paragraph of this Article 7 as well as the funds, if any, provided by the Railroad for the remainder of such cost) multiplied by a fraction, the numerator of which shall be the number of instalment payment dates remaining as of the date payment is made with respect to that Casualty Occurrence to and including April 1, 1986, and the denominator of which shall be the number of said instalment payment dates remaining as of the date of the acquisition of said replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 6 hereof. Any and all replacement units shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all replacement units shall be free and clear of all prior liens and encumbrances except permitted liens as defined in Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause the replacement units to come under and be subject to this Agreement and to protect the Vendor's title and its rights under this Agreement with respect thereto. All replacement units shall be warranted as being free from defects in materials, workmanship or design under normal use and service; provided, however, that if any replacement unit shall be other than a locomotive such warranty may be limited to making good at the plant of the manufacturer of such unit any part or parts of that unit which shall, within one year after delivery thereof to the Railroad, be returned to said manufacturer with transportation charges prepaid and which the examination of said manufacturer shall disclose to its satisfaction to have been thus defective, and pro-

vided further that if any such replacement unit shall be a locomotive such warranty may be limited to making good at the plant of the manufacturer of that unit any part or parts of the unit which shall, within two years after delivery thereof to the Railroad or 250,000 miles in scheduled service, whichever shall first occur, be returned to said manufacturer with transportation charges prepaid and which the examination of said manufacturer shall disclose to its satisfaction to have been thus defective. Whenever the Railroad shall file with the Vendor a written direction to apply any money to or toward the cost of any replacement unit or units and a certificate of any Vice President, the Assistant Vice President—Finance or the Treasurer of the Railroad that the cost of the replacement unit or units does not exceed the fair value thereof, the Railroad shall file with the Vendor such number of executed counterparts, as may reasonably be requested, of an opinion of counsel for the Railroad covering the matters set forth in this paragraph.

So long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 7 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper having the highest rating of the National Credit Office, Division of Dun & Bradstreet, Inc., Standard & Poor's Corporation or any similar national credit rating agency then in existence or (iii) certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$50,000,000, in each case maturing in not more than one year from the date of investment (such investments being herein called Investments), as may be specified in such written direction. Any Investments shall from time to time be sold and the proceeds reinvested in such other Investments as the Railroad may in writing direct. Any interest received by the

Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon from the time of acquisition thereof, up to the cost thereof (including accrued interest) shall be held by the Vendor for application pursuant to this Article 7, and any excess shall be paid to the Railroad. If the proceeds (plus said interest) shall be less than said cost, the Railroad will promptly pay to the Vendor an amount equal to that deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any of the events of default specified in Article 16 hereof shall have occurred and be continuing, then so long as that event of default shall continue all money then held by the Vendor pursuant to this Article 7 shall be applied by the Vendor as if it were money received upon the sale of Equipment pursuant to Article 17 hereof.

In the event that any unit of the Equipment shall to the knowledge of the Railroad be rendered permanently unfit for use due to a Casualty Occurrence after delivery by the Manufacturer of the unit to the Railroad and acceptance thereof on behalf of the Railroad but prior to the time that the Manufacturer shall have received the Invoiced Price for the unit from either the Railroad or any assignee of this Agreement, then the Railroad shall be obligated to pay the Purchase Price in full to the Manufacturer within 30 days of the Casualty Occurrence and that unit shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement.

ARTICLE 8. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

ARTICLE 9. *Compliance with Laws and Rules.* During the term of this Agreement the Railroad will comply in all respects

with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that those laws and rules affect the operation or use of the Equipment. In the event that those laws or rules require the alteration of the Equipment, the Railroad will comply therewith, at its expense, and will maintain the Equipment in proper condition for operation under those laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* On or before April 30 in each year, commencing with the year 1972, the Railroad will furnish to the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of all units of the Equipment then covered hereby, (b) showing the amount, description and numbers of any units of the Equipment that have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding 12 months (or since the date of delivery hereunder of the Equipment in the case of the first such statement) and (c) stating that, in the case of any units of the Equipment repaired or repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 11. *Possession and Use.* The Railroad, so long as it shall not be in default hereunder, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it or by any Affiliate or over

which it or any Affiliate has trackage rights and upon connecting and other railroads in the usual interchange of traffic and upon connecting and other railroads over which through service may from time to time be afforded but only upon and subject to all the terms and conditions of this Agreement, and upon the further condition that if the Equipment is to be used upon lines of railroad in any jurisdiction outside the United States of America, the Railroad shall prior to such use, to the satisfaction of the Vendor, arrange for the filing, recording or deposit (or any similar action) of all instruments required or advisable to protect the security interest of the Vendor in the Equipment in that jurisdiction and furnish to the Vendor an opinion of counsel practicing in that jurisdiction that this Agreement and any instrument of assignment pursuant to which rights hereunder may be assigned are valid instruments enforceable against the parties hereto and thereto in that jurisdiction in accordance with their terms and that any filing, recording or deposit (or any similar action) of all instruments required or advisable to protect the security interest of the Vendor in such Equipment in that jurisdiction has been effected, specifying said filing, recording or deposit (or similar action) so effected. The Railroad, without the prior written consent of the Vendor, may, under an appropriate agreement, grant the right to possession of the Equipment and the use thereof to any Affiliate. The rights of any Affiliate under such an agreement shall be expressly subordinated to the rights of the Vendor under this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through, under or against the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any unit or units of the Equipment equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does

not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called permitted liens).

Except for permitted liens, the Railroad shall not permit any liens to attach to any unit of the Equipment from and after the delivery of that unit to the Railroad hereunder.

ARTICLE 13. *Indemnities and Warranties.* The Railroad shall indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad shall bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all units of the Equipment.

The Manufacturer warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 1 hereof and, when delivered to the Railroad, will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by the Manufacturer) and workmanship or design (except as to designs specified by the Railroad and not developed or purported to be developed by the Manufacturer) under normal use and service. The Manufacturer's obligation under this paragraph shall be limited to making good at its plant any part or parts of the Equipment which shall,

within one year after the delivery of that unit of the Equipment to the Railroad, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective.

The Manufacturer further warrants specialties not of its own specification or design to the same extent that the suppliers of those specialties warrant items to the Manufacturer.

The warranties set forth in this Article 13 are expressly in lieu of all other warranties, expressed or implied. The Manufacturer makes no warranty of merchantability or fitness for a particular purpose.

The Manufacturer agrees with the Railroad that the acceptance of a unit or units of the Equipment by the Railroad under Article 2 hereof shall not be deemed a waiver by the Railroad of any of its rights under this Article 13.

ARTICLE 14. *Patent Indemnities.* Except in case of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer shall indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise shall indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design specified by the Railroad

the Specifications referred to herein and is suitable for the ordinary purposes for which such Equipment is used.

The Manufacturer further warrants the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery or before each unit of the Equipment has been operated 250,000 miles, whichever event shall first occur. The Manufacturer agrees to correct such defects, which examination shall disclose to the Manufacturer's satisfaction to be defective, by repair or replacement f.o.b. the Manufacturer's plant and the correction of such defects shall constitute fulfillment of the Manufacturer's obligation with respect to defects under this warranty.

The Manufacturer warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Manufacturer.

There are no warranties, expressed or implied, made by the Manufacturer except the warranties set out above.

The acceptance of a unit or units of equipment under Article 2 hereof shall not be deemed a waiver by the Railroad of any of its rights under this Item 4.

SCHEDULE B—GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)

<u>Type</u>	<u>Specifications</u>	<u>AAR Symbol</u>	<u>Plant</u>	<u>Quantity</u>	<u>Road Numbers (both inclusive)</u>	<u>Estimated Unit Price</u>	<u>Estimated Total Price</u>	<u>Delivery</u>
3,000 HP diesel electric road locomotives, model SD-40.	EMD Specification No. 8054 dated 11/15/70; amended by Specification Amendment 8054-3 dated 11/15/70.	C-C	McCook, Illinois	15	1610-1624	\$299,014	\$4,485,210	At Osborn, Indiana, or at such other point or points as may be mutually agreed upon by the parties hereto, in May 1971.
2,000 HP diesel electric road locomotives, model GP-38-AC.	EMD Specification No. 8081 dated 4/15/70.	B-B	McCook, Illinois	15	4125-4139	\$243,535	\$3,653,025	At Osborn, Indiana, or at such other points or points as may be mutually agreed upon by the parties hereto, in June 1971.
2,000 HP diesel electric road locomotives, model GP-38-AC.	EMD Specification No. 8081 as amended by Specification Amendment 8081-3 dated 7/1/70.	B-B	McCook, Illinois	10	4100-4109	\$238,535	\$2,385,350	At Osborn, Indiana, or at such other point or points as may be mutually agreed upon by the parties hereto, in August 1971.
Total							\$10,523,585	

AGREEMENT AND ASSIGNMENT dated as of April 1, 1971 (hereinafter called this Assignment), between the corporation first named in the testimonium below (hereinafter called the Manufacturer) and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania corporation (hereinafter called the Agent), acting as agent for the investors (hereinafter called the Investors) whose names appear in Schedule A to an Agency Agreement dated as of April 1, 1971 (hereinafter called the Agency Agreement), a copy of which has been delivered to the Manufacturer.

The Manufacturer and Norfolk and Western Railway Company, a Virginia corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of April 1, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (hereinafter, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 of the Conditional Sale Agreement, respectively, called the Equipment).

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth and the sum of \$1 paid by the Agent to the Manufacturer, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. The Manufacturer hereby assigns, transfers and sets over unto the Agent, its successors and assigns:

(a) all the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as severally delivered and accepted and upon payment by the Agent

to the Manufacturer of the amounts required to be paid under Section 5 hereof on the Closing Date (as defined in the Conditional Sale Agreement) with respect thereto;

(b) all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof, in the last paragraph of Article 7 thereof and in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited above in subparagraph (b) hereof, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and indemnities contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 2, 4, 7, 13, 14 and 15 and under subparagraphs (a) and (b) of the third paragraph of Article 3 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions

of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Agent in the Agent's own name, or in the name of the Agent's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all funds, securities and other property to which the Agent is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but not at the expense of the Manufacturer.

If the Agent fails to pay the Manufacturer the amounts required to be paid with respect to each unit of the Equipment pursuant to Section 5 hereof at the time therein specified, then any right, title and interest in and to each unit, including any right, title and interest under the Conditional Sale Agreement with respect to each unit which has been assigned, transferred or set over to the Agent by the Manufacturer, shall automatically, and without further action on the part of the Agent, be reassigned, transferred and set over back to the Manufacturer by the Agent.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Agent and the Railroad that at the time of delivery of each unit of the Equip-

ment to the Railroad under the Conditional Sale Agreement, it had legal title to, and good and lawful right to sell, each unit thereof and that the title to each unit thereof was free of all claims, liens and encumbrances of any nature except only as are contemplated in the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to each unit against the demands of all persons based on claims originating prior to the delivery of that unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any unit of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Agent from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the delivery or warranty thereof, or under Articles 13 and 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and shall not be enforceable against the Agent or any party or parties in whom title to the Equipment or any unit thereof or any of the rights

of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The foregoing indemnification provisions are conditioned upon (a) the Agent's giving notice to the Manufacturer of any suit, proceeding or action by the Agent herein described, and promptly moving or taking other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad therein, and (b), if the court or other body having jurisdiction in such a suit, proceeding or action denies said motion or other action and accepts the defense, setoff, counterclaim or recoupment as a triable issue in said suit, proceeding or action, the Agent's promptly notifying the Manufacturer of the defense, setoff, counterclaim or recoupment asserted by the Railroad and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against the defense, setoff, counterclaim or recoupment.

Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment, prior to the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

SECTION 4. Upon request of the Agent, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. Subject to the condition contained in the fifth paragraph of this Section 5, if the Agent shall at any time receive from the Railroad in respect of the Conditional Sale Agreement a copy of a Final Statement (as defined in subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement) showing that the Final Purchase Price (as defined in said subparagraph (b)) of all Groups of units of the Equipment delivered under the Conditional Sale Agreement exceeds the Aggregate Invoiced Price (as defined in subparagraph (a) of said third paragraph) of said units of the Equipment but is less than the Deferred Purchase Price (as defined in said subparagraph (a)) of all units of the Equipment, the Agent forthwith shall pay to the Manufacturer the amount of such excess.

The Agent shall, subject to the condition contained in the fifth paragraph of this Section 5, pay to the Manufacturer, on each Closing Date fixed as provided in said Article 3 occurring on or before April 1, 1972, with respect to a Group of units of the Equipment, that portion of the Invoiced Price (as defined in said Article 3) of the Group payable by the Railroad to the Manufacturer pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that on or before that Closing Date there shall have been delivered to the Agent, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of sale from the Manufacturer to the Agent transferring to the Agent, for the benefit of the Investors,

title to the units of the Equipment in said Group and warranting to the Agent and to the Railroad that at the time of delivery of said units to the Railroad under the Conditional Sale Agreement the Manufacturer had legal title to, and good and lawful right to sell, said units and that title to said units was free of all claims, liens or encumbrances of any nature except only as are contemplated in the Conditional Sale Agreement;

(b) Certificate of acceptance signed by an authorized representative of the Railroad stating that the units of the Equipment in said Group have been delivered to the Railroad and inspected and accepted on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each of said units at the time of its acceptance, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

(c) Invoice of the Manufacturer for the units of the Equipment in said Group, with a certification by the Railroad endorsed thereon as to the correctness of the price of such units stated therein;

(d) Opinion of Messrs. Kelley Drye Warren Clark Carr & Ellis, who are acting as special counsel for the Agent and for the Investors, dated as of the Closing Date, stating that (i) the Agency Agreement has been duly authorized, executed and delivered by, and is a legal, valid and binding instrument of, each of the parties thereto and is enforceable in accordance with its terms, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by, and are legal, valid and binding instruments of, the respective parties thereto and hereto and are enforceable in accordance with their terms, (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in said Group is validly vested in

the Agent and the units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only as are contemplated in the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission and no other filing or recordation is necessary for the protection of the rights of the Agent in the United States of America, and the Conditional Sale Agreement and this Assignment have been deposited with the Registrar General of Canada (with provision being made for publication of notice of such deposit) and filed with the Department of Financial and Commercial Affairs, Companies Branch, of Ontario, Canada, and that no other filing or recordation is necessary for the protection of the rights of the Agent in Canada and (vii) registration of the Conditional Sale Agreement or this Assignment, or of interests acquired therein or herein, or of the Certificates of Interest (as defined in the Agency Agreement), under the circumstances contemplated by the Agency Agreement, is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(e) Opinion of counsel for the Railroad to the effect set forth in clauses (iv), (v) and (vi) of subparagraph (d) of this paragraph, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of the Commonwealth of Virginia (the state of its incorporation) and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Railroad and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the execution and delivery of the Agency Agreement and the Conditional Sale Agreement, and the consummation and fulfillment of the transactions contemplated therein, will not conflict with, result in a breach of, or constitute a default under, the Charter and Bylaws of

the Railroad, any action of the Board of Directors of the Railroad authorized under said Charter and Bylaws, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree of any court or other governmental instrumentality or of any agreement or instrument to which the Railroad is now a party and (iv) subject to the due authorization, execution and delivery of this Assignment by the respective parties hereto, this Assignment is a legal, valid and binding instrument enforceable in accordance with its terms; and

(f) Opinion of counsel for the Manufacturer to the effect set forth in clauses (iii) and (iv) of subparagraph (d) of this paragraph, and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed, and delivered by the Manufacturer and, assuming due authorization, execution and delivery thereof, by the Railroad and the Agent, respectively, are legal, valid and binding instruments enforceable in accordance with their terms.

Any opinion delivered hereunder on or after the first Date of Deposit (as defined in the Agency Agreement) may state that counsel signing such opinion reaffirms any statement contained in any opinion of the same counsel theretofore or then being delivered pursuant to the Agency Agreement without repeating the substance of such earlier opinion. In giving the opinions specified in subparagraphs (d), (e) and (f) of the second paragraph of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely (a) as to the due authorization and execution of the Agency Agreement referred to in clause (i) of said subparagraph (d) upon the representation of each of the parties to the Agency

Agreement contained in Section 5 of Article 4 thereof, (b) as to any matter governed by the law of any jurisdiction other than New York or the United States of America, upon the opinion of counsel for the Manufacturer or counsel for the Railroad or other counsel satisfactory to Special Counsel as to that matter; provided, however, that Special Counsel shall state in such an opinion that they believe that they, the Agent and the Investors are justified in so relying.

The obligation of the Agent hereunder to make any payment to the Manufacturer as hereinabove provided is hereby expressly conditioned upon the prior deposit by the Investors with the Agent, pursuant to the Agency Agreement, of sufficient funds to enable the Agent to make that payment; provided, however, in the event of the failure of any Investor to make timely deposit with the Agent in full of the funds required to be deposited by it under the Agency Agreement, the Manufacturer shall be entitled to look only to the Railroad for the payment which would have been made from any Investors' funds not so deposited.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Agent shall not be required to make any payment with respect to any units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 or 7 thereof.

SECTION 6. The Agent may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent

of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Agent, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that it is a valid and existing agreement binding upon the Manufacturer and that it is now in force without amendment thereto; and

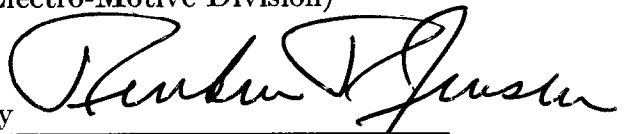
(b) covenants and agrees that it will from time to time and at all times, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement and this Assignment shall be filed, recorded or deposited.

SECTION 9. This Assignment, which is dated for convenience as of April 1, 1971, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. The Agent will deliver one of such counterparts to the Railroad.

IN WITNESS WHEREOF, the Manufacturer and the Agent have caused this instrument to be signed and acknowledged by their proper officers or officials and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By 
Vice President

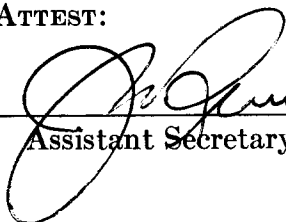
ATTEST:


Assistant Secretary

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, as Agent

By 
Vice President

ATTEST:


Assistant Secretary

STATE OF ^{Michigan} ILLINOIS }
 COUNTY OF ^{Wayne} COOK } ss.:

On this 22nd day of April, 1971, before me personally appeared Reuben R. Jensen to me personally known, who, being by me duly sworn, says that he is a Vice President of General Motors Corporation (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Margaret M. Bedell
 Notary Public

MARGARET M. BEDELL
 Notary Public, Wayne County, Mich.
 My Commission Expires Nov. 13, 1972

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF PHILADELPHIA } ss.:

On this 23rd day of April, 1971, before me personally appeared W. M. KRAVER, to me personally known, who, being by me duly sworn, says that he is a Vice President of The First Pennsylvania Banking and Trust Company, that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said association.

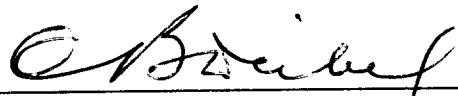
Judith Z. Pote
 Notary Public

JUDITH Z. POTE
 Notary Public, Philadelphia, Philadelphia Co.
 My Commission Expires January 28, 1974

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Norfolk and Western Railway Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment dated as of April 1, 1971.

NORFOLK AND WESTERN RAILWAY COMPANY

By 
Assistant Vice President—Finance

STATE OF ~~ILLINOIS~~ ^{Michigan} }
COUNTY OF ~~COOK~~ ^{Wayne} } ss.:

On this 22nd day of April, 1971, before me personally appeared Reuben R. Jensen, to me personally known, who, being by me duly sworn, says that he is a Vice President of General Motors Corporation (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

MARGARET M. BEDILL
Notary Public, Wayne County, Mich.
My Commission Expires Nov. 18, 1972

Margaret M. Bedill
Notary Public

COMMONWEALTH OF VIRGINIA }
CITY OF ROANOKE } ss.:

On this 17th day of April, 1971, before me personally appeared C. B. Deibel, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President—Finance of Norfolk and Western Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Judith A. De Lanning
Notary Public

My Commission Expires April 21, 1973

**SCHEDULE A—GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)**

Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation.

Item 2: Deferred Purchase Price: \$10,520,000.

Item 3: For the purpose of making settlement, the Equipment may constitute a single Group or be divided into Groups of units of the Equipment delivered to and accepted by the Railroad hereunder, each Group to consist of such number of units as shall be determined by mutual agreement of the Railroad and the Manufacturer.

Item 4: 9301 55th Street, La Grange, Illinois 60525.

Item 5: The Conditional Sale Agreements dated as of April 1, 1971, between the Railroad and ACF Industries, Incorporated, General Electric Company, and Messrs. Allen R. Bradley and John A. Zerbe, respectively.

Item 6: **FURTHER UNDERSTANDINGS:** The following provisions in respect of delivery shall supersede and be substituted for the first and sixth paragraphs of Article 2 hereof:

The Manufacturer will deliver the Equipment to the Railroad, f.o.b. McCook, Illinois, at the place or places and in accordance with the delivery schedule set forth in Schedule B hereto. Upon shipment by the Manufacturer at McCook, Illinois, of each unit of the Equipment hereunder, the Railroad shall assume the responsibility therefor and risk of loss thereof.

The following provisions in respect of warranties shall supersede and be substituted for the second through fifth paragraphs of Article 13 hereof:

The Manufacturer warrants to the Railroad that the Equipment is of the kind and quality described in

the Specifications referred to herein and is suitable for the ordinary purposes for which such Equipment is used.

The Manufacturer further warrants the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery or before each unit of the Equipment has been operated 250,000 miles, whichever event shall first occur. The Manufacturer agrees to correct such defects, which examination shall disclose to the Manufacturer's satisfaction to be defective, by repair or replacement f.o.b. the Manufacturer's plant and the correction of such defects shall constitute fulfillment of the Manufacturer's obligation with respect to defects under this warranty.

The Manufacturer warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Manufacturer.

There are no warranties, expressed or implied, made by the Manufacturer except the warranties set out above.

The acceptance of a unit or units of equipment under Article 2 hereof shall not be deemed a waiver by the Railroad of any of its rights under this Item 4.

SCHEDULE B—GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)

<u>Type</u>	<u>Specifications</u>	<u>AAR Symbol</u>	<u>Plant</u>	<u>Quantity</u>	<u>Road Numbers (both inclusive)</u>	<u>Estimated Unit Price</u>	<u>Estimated Total Price</u>	<u>Delivery</u>
3,000 HP diesel electric road locomotives, model SD-40.	EMD Specification No. 8054 dated 11/15/70; amended by Specification Amendment 8054-3 dated 11/15/70.	C-C	McCook, Illinois	15	1610-1624	\$299,014	\$4,485,210	At Osborn, Indiana, or at such other point or points as may be mutually agreed upon by the parties hereto, in May 1971.
2,000 HP diesel electric road locomotives, model GP-38-AC.	EMD Specification No. 8081 dated 4/15/70.	B-B	McCook, Illinois	15	4125-4139	\$243,535	\$3,653,025	At Osborn, Indiana, or at such other points or points as may be mutually agreed upon by the parties hereto, in June 1971.
2,000 HP diesel electric road locomotives, model GP-38-AC.	EMD Specification No. 8081 as amended by Specification Amendment 8081-3 dated 7/1/70.	B-B	McCook, Illinois	10	4100-4109	\$238,535	\$2,385,350	At Osborn, Indiana, or at such other point or points as may be mutually agreed upon by the parties hereto, in August 1971.
Total							\$10,523,585	

AGREEMENT AND ASSIGNMENT dated as of April 1, 1971 (hereinafter called this Assignment), between the corporation first named in the testimonium below (hereinafter called the Manufacturer) and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania corporation (hereinafter called the Agent), acting as agent for the investors (hereinafter called the Investors) whose names appear in Schedule A to an Agency Agreement dated as of April 1, 1971 (hereinafter called the Agency Agreement), a copy of which has been delivered to the Manufacturer.

The Manufacturer and Norfolk and Western Railway Company, a Virginia corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of April 1, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (hereinafter, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 of the Conditional Sale Agreement, respectively, called the Equipment).

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth and the sum of \$1 paid by the Agent to the Manufacturer, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. The Manufacturer hereby assigns, transfers and sets over unto the Agent, its successors and assigns:

(a) all the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as severally delivered and accepted and upon payment by the Agent

to the Manufacturer of the amounts required to be paid under Section 5 hereof on the Closing Date (as defined in the Conditional Sale Agreement) with respect thereto;

(b) all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof, in the last paragraph of Article 7 thereof and in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited above in subparagraph (b) hereof, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and indemnities contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 2, 4, 7, 13, 14 and 15 and under subparagraphs (a) and (b) of the third paragraph of Article 3 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions

of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Agent in the Agent's own name, or in the name of the Agent's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all funds, securities and other property to which the Agent is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but not at the expense of the Manufacturer.

If the Agent fails to pay the Manufacturer the amounts required to be paid with respect to each unit of the Equipment pursuant to Section 5 hereof at the time therein specified, then any right, title and interest in and to each unit, including any right, title and interest under the Conditional Sale Agreement with respect to each unit which has been assigned, transferred or set over to the Agent by the Manufacturer, shall automatically, and without further action on the part of the Agent, be reassigned, transferred and set over back to the Manufacturer by the Agent.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Agent and the Railroad that at the time of delivery of each unit of the Equip-

ment to the Railroad under the Conditional Sale Agreement, it had legal title to, and good and lawful right to sell, each unit thereof and that the title to each unit thereof was free of all claims, liens and encumbrances of any nature except only as are contemplated in the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to each unit against the demands of all persons based on claims originating prior to the delivery of that unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any unit of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Agent from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the delivery or warranty thereof, or under Articles 13 and 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and shall not be enforceable against the Agent or any party or parties in whom title to the Equipment or any unit thereof or any of the rights

of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The foregoing indemnification provisions are conditioned upon (a) the Agent's giving notice to the Manufacturer of any suit, proceeding or action by the Agent herein described, and promptly moving or taking other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad therein, and (b), if the court or other body having jurisdiction in such a suit, proceeding or action denies said motion or other action and accepts the defense, setoff, counterclaim or recoupment as a triable issue in said suit, proceeding or action, the Agent's promptly notifying the Manufacturer of the defense, setoff, counterclaim or recoupment asserted by the Railroad and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against the defense, setoff, counterclaim or recoupment.

Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment, prior to the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

SECTION 4. Upon request of the Agent, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. Subject to the condition contained in the fifth paragraph of this Section 5, if the Agent shall at any time receive from the Railroad in respect of the Conditional Sale Agreement a copy of a Final Statement (as defined in subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement) showing that the Final Purchase Price (as defined in said subparagraph (b)) of all Groups of units of the Equipment delivered under the Conditional Sale Agreement exceeds the Aggregate Invoiced Price (as defined in subparagraph (a) of said third paragraph) of said units of the Equipment but is less than the Deferred Purchase Price (as defined in said subparagraph (a)) of all units of the Equipment, the Agent forthwith shall pay to the Manufacturer the amount of such excess.

The Agent shall, subject to the condition contained in the fifth paragraph of this Section 5, pay to the Manufacturer, on each Closing Date fixed as provided in said Article 3 occurring on or before April 1, 1972, with respect to a Group of units of the Equipment, that portion of the Invoiced Price (as defined in said Article 3) of the Group payable by the Railroad to the Manufacturer pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that on or before that Closing Date there shall have been delivered to the Agent, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of sale from the Manufacturer to the Agent transferring to the Agent, for the benefit of the Investors,

title to the units of the Equipment in said Group and warranting to the Agent and to the Railroad that at the time of delivery of said units to the Railroad under the Conditional Sale Agreement the Manufacturer had legal title to, and good and lawful right to sell, said units and that title to said units was free of all claims, liens or encumbrances of any nature except only as are contemplated in the Conditional Sale Agreement;

(b) Certificate of acceptance signed by an authorized representative of the Railroad stating that the units of the Equipment in said Group have been delivered to the Railroad and inspected and accepted on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each of said units at the time of its acceptance, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

(c) Invoice of the Manufacturer for the units of the Equipment in said Group, with a certification by the Railroad endorsed thereon as to the correctness of the price of such units stated therein;

(d) Opinion of Messrs. Kelley Drye Warren Clark Carr & Ellis, who are acting as special counsel for the Agent and for the Investors, dated as of the Closing Date, stating that (i) the Agency Agreement has been duly authorized, executed and delivered by, and is a legal, valid and binding instrument of, each of the parties thereto and is enforceable in accordance with its terms, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by, and are legal, valid and binding instruments of, the respective parties thereto and hereto and are enforceable in accordance with their terms, (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in said Group is validly vested in

the Agent and the units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only as are contemplated in the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission and no other filing or recordation is necessary for the protection of the rights of the Agent in the United States of America, and the Conditional Sale Agreement and this Assignment have been deposited with the Registrar General of Canada (with provision being made for publication of notice of such deposit) and filed with the Department of Financial and Commercial Affairs, Companies Branch, of Ontario, Canada, and that no other filing or recordation is necessary for the protection of the rights of the Agent in Canada and (vii) registration of the Conditional Sale Agreement or this Assignment, or of interests acquired therein or herein, or of the Certificates of Interest (as defined in the Agency Agreement), under the circumstances contemplated by the Agency Agreement, is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(e) Opinion of counsel for the Railroad to the effect set forth in clauses (iv), (v) and (vi) of subparagraph (d) of this paragraph, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of the Commonwealth of Virginia (the state of its incorporation) and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Railroad and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the execution and delivery of the Agency Agreement and the Conditional Sale Agreement, and the consummation and fulfillment of the transactions contemplated therein, will not conflict with, result in a breach of, or constitute a default under, the Charter and Bylaws of

the Railroad, any action of the Board of Directors of the Railroad authorized under said Charter and Bylaws, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree of any court or other governmental instrumentality or of any agreement or instrument to which the Railroad is now a party and (iv) subject to the due authorization, execution and delivery of this Assignment by the respective parties hereto, this Assignment is a legal, valid and binding instrument enforceable in accordance with its terms; and

(f) Opinion of counsel for the Manufacturer to the effect set forth in clauses (iii) and (iv) of subparagraph (d) of this paragraph, and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed, and delivered by the Manufacturer and, assuming due authorization, execution and delivery thereof, by the Railroad and the Agent, respectively, are legal, valid and binding instruments enforceable in accordance with their terms.

Any opinion delivered hereunder on or after the first Date of Deposit (as defined in the Agency Agreement) may state that counsel signing such opinion reaffirms any statement contained in any opinion of the same counsel theretofore or then being delivered pursuant to the Agency Agreement without repeating the substance of such earlier opinion. In giving the opinions specified in subparagraphs (d), (e) and (f) of the second paragraph of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely (a) as to the due authorization and execution of the Agency Agreement referred to in clause (i) of said subparagraph (d) upon the representation of each of the parties to the Agency

Agreement contained in Section 5 of Article 4 thereof, (b) as to any matter governed by the law of any jurisdiction other than New York or the United States of America, upon the opinion of counsel for the Manufacturer or counsel for the Railroad or other counsel satisfactory to Special Counsel as to that matter; provided, however, that Special Counsel shall state in such an opinion that they believe that they, the Agent and the Investors are justified in so relying.

The obligation of the Agent hereunder to make any payment to the Manufacturer as hereinabove provided is hereby expressly conditioned upon the prior deposit by the Investors with the Agent, pursuant to the Agency Agreement, of sufficient funds to enable the Agent to make that payment; provided, however, in the event of the failure of any Investor to make timely deposit with the Agent in full of the funds required to be deposited by it under the Agency Agreement, the Manufacturer shall be entitled to look only to the Railroad for the payment which would have been made from any Investors' funds not so deposited.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Agent shall not be required to make any payment with respect to any units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 or 7 thereof.

SECTION 6. The Agent may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent

of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Agent, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that it is a valid and existing agreement binding upon the Manufacturer and that it is now in force without amendment thereto; and

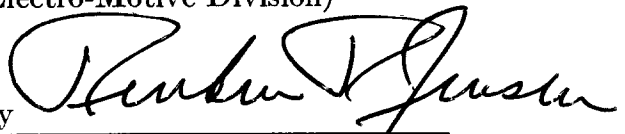
(b) covenants and agrees that it will from time to time and at all times, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement and this Assignment shall be filed, recorded or deposited.

SECTION 9. This Assignment, which is dated for convenience as of April 1, 1971, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. The Agent will deliver one of such counterparts to the Railroad.

IN WITNESS WHEREOF, the Manufacturer and the Agent have caused this instrument to be signed and acknowledged by their proper officers or officials and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By 
Vice President

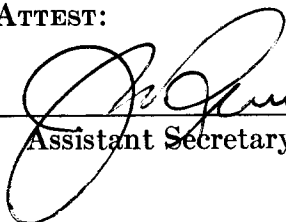
ATTEST:


Assistant Secretary

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, as Agent

By 
Vice President

ATTEST:


Assistant Secretary

STATE OF ^{Michigan} ILLINOIS }
 COUNTY OF ^{Wayne} COOK } ss.:

On this 22nd day of April, 1971, before me personally appeared Reuben R. Jensen to me personally known, who, being by me duly sworn, says that he is a Vice President of General Motors Corporation (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Margaret M. Bedell
 Notary Public

MARGARET M. BEDELL
 Notary Public, Wayne County, Mich.
 My Commission Expires Nov. 13, 1972

COMMONWEALTH OF PENNSYLVANIA }
 COUNTY OF PHILADELPHIA } ss.:

On this 23rd day of April, 1971, before me personally appeared W. M. KRAVER, to me personally known, who, being by me duly sworn, says that he is a Vice President of The First Pennsylvania Banking and Trust Company, that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said association.

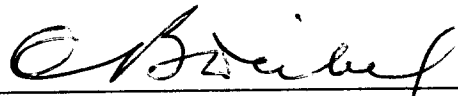
Judith Z. Pote
 Notary Public

JUDITH Z. POTE
 Notary Public, Philadelphia, Philadelphia Co.
 My Commission Expires January 28, 1974

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Norfolk and Western Railway Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment dated as of April 1, 1971.

NORFOLK AND WESTERN RAILWAY COMPANY

By 
Assistant Vice President—Finance